

Message Text

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ORIGIN EB-07

INFO OCT-01 AF-10 ISO-00 TRSE-00 L-03 COME-00 AID-05
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FM SECSTATE WASHDC
TO AMEMBASSY MONROVIA

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E.O. 11652: N/A

TAGS: EINV

SUBJECT: LIBERIAN REFINERY COMPANY

REFS: (A) MONROVIA 3419; (B) MONROVIA 3430; (C)
MONROVIA A-26

1. DEPARTMENT HAS RECEIVED LETTER FROM DAVID REICHARDT,
GENERAL COUNSEL FOR DYNALECTRON WITH EXPLANATION AND
DOCUMENTATION JUSTIFYING SUN/DYNALECTRON CLAIM OF
EXPROPRIATION. IN ADDITION TO PREVIOUSLY STATED
ARGUMENTS (REF A) DOCUMENTATION INCLUDES POINT BY
POINT ANSWERS TO ARGUMENTS OF FINMIN PHILLIP'S REPLY
(REF B) AND CORRESPONDENCE BETWEEN LRC AND GOL CONCERNING
PRICE INCREASES AND OTHER MATTERS (COPY OF STATEMENT
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BEING POUCHED).

2. REICHARDT LETTER INDICATES SUN/DYNALECTRON DESIRE
TO SEEK USG SANCTIONS AGAINST GOL IF EQUITABLE SETTLEMENT
IS NOT FORTHCOMING. FYI: IN EXPROPRIATION CASES,
SUSPENSION OF BILATERAL ASSISTANCE (HICKENLOOPER
AMENDMENT), OPPOSITION TO MULTILATERAL ASSISTANCE

(GONZALEZ AMENDMENT) AND WITHDRAWAL OF GSP ELIGIBILITY ARE, IN ABSENCE OF APPROPRIATE STEPS TOWARD SETTLEMENT, REQUIRED BY STATUTE. WHILE HICKENLOOPER AND TRADE ACT

CONTAIN WAIVERS, GONZALEZ DOES NOT. END FYI.

3. DEPARTMENT AND INTERAGENCY EXPROPRIATION GROUP HAVE NOT YET REACHED DECISION AS TO WHETHER EXPROPRIATION HAS IN FACT OCCURRED. SINCE COMPANIES WILL BOTH RECOVER LOSSES MORE FULLY (SUN BY TAX WRITE-OFF, DYNALECTRON BY INSURANCE) IF USG REACHES DECISION SUPPORTING EXPROPRIATION CLAIM, WE EXPECT COMPANIES WILL PRESS EXPRO GROUP TO ACCEPT ARGUMENTS THAT GOL ACTION HAS BEEN EXPROPRIATORY. THE INTERNATIONAL LAW CONCEPT OF EXPROPRIATION EMBRACES NOT ONLY OUTRIGHT SEIZURE OF PROPERTY, BUT ALSO OTHER GOVERNMENTAL ACTIONS WHICH DEPRIVE THE INVESTOR OF THE CONTROL OR BENEFIT FROM HIS INVESTMENT, SO LONG AS THESE ACTIONS ARE NOT MERE REGULATORY MEASURES, APPLIED NON-DISCRIMINATORILY, AND INTENDED IN GOOD FAITH TO ACHIEVE AN OBJECTIVE OTHER THAN DEPRIVATION OF THE INVESTORS RIGHT TO CONTROL OR BENEFIT FROM HIS INVESTMENT. IF GOL CONTINUES TO AVOW THAT IT HAS NOT EXPROPRIATED LRC PROPERTY, OUR DECISION WILL DEPEND ON WHETHER OR NOT PRICING POLICY AND OTHER ACTIONS OF GOL MADE IT IMPOSSIBLE FOR SUN TO RECOVER OR DISPOSE OF ITS EQUITY LIMITED OFFICIAL USE

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AND ACTUAL EVENTS CONCERNING DISPOSITION OF LRC ASSETS.

4. AIRGRAM RAISED NUMBER OF QUESTIONS REQUIRING FURTHER CLARIFICATION. REQUEST EMBASSY PROVIDE ADDITIONAL INFORMATION ON FOLLOWING POINTS.

A. DID GOL HAVE OPPORTUNITY TO APPROVE OF DISAPPROVE DEBT/EQUITY RATIO OF LRC? DID IT MAKE KNOWN ITS POSITION ON DEBT/EQUITY RATIO PRIOR TO THE FORCED CAPITALIZATION IN 1974?

B. IT IS UNCLEAR HOW COMPANY COULD FINANCE EXPANSION WITH RETAINED EARNINGS WHEN OPERATION FOR 1970-76 RESULTED IN LOSS. PLEASE CLARIFY EXTENT TO WHICH DEPRECIATION WRITE-OFFS FOR ADDITIONAL CAPACITY WERE RESPONSIBLE FOR LOSSES INCURRED.

C. WHAT IS TOTAL AMOUNT OF LRC CAPITAL DEBT STILL HELD BY SUN AND DYNALECTRON? DOES GOL OFFER OF DOLS 1.5 MILLION FOR ASSETS MAKE ANY PROVISION FOR REPAYMENT OF THIS DEBT?

D. DID COMPANY AGREE TO TECHNICAL SURVEY AND EVALUATION OF REFINERY IN PRINCIPLE? WERE THEY ABLE TO COMMENT ON CHOICE OF FIRM CHOSEN BY GOL?

E. MATERIAL SUPPLIED BY REICHARDT STATES THAT SUN OFFERED TO SELL ITS SHARE OF EQUITY AND DEBT FOR DOLS 9 MILLION, WHICH WAS REJECTED BY GOL. WAS THERE ANY DISCUSSION OF PRICE RANGE BY TWO PARTIES PRIOR SUN OFFER AND GOL COUNTER OFFER?

4. ALSO REQUEST EMBASSY COMMENTS ON FOLLOWING QUESTIONS.

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A. WHAT IS CURRENT OPERATIONAL STATUS OF REFINERY? HAVE REPAIRS BEEN COMPLETED AND WHO IS MANAGING OPERATIONS?

B. IS GOL STILL PURCHASING CARGOES FOR LRC DISTRIBUTION WITH PAYMENTS BEING MADE TO GOL? ARE MAJOR FUEL USERS STILL MAKING THEIR OWN ARRANGEMENTS FOR FUEL SUPPLIERS?

C. ARE THERE ANY LIBERIAN LAWS OR REGULATIONS AFFECTING DISPOSITION OF EQUITY OR ASSETS SHOULD LRC NOT MEET CONCESSION REQUIREMENTS CONCERNING POL SUPPLIES?

D. DOES GOL APPEAR WILLING TO ENTER INTO GOOD FAITH NEGOTIATIONS THAT WILL LEAD TO MUTUALLY ACCEPTABLE PRICE WITH SUN/DYNALECTRON FOR ASSETS OR EQUITY OF LRC?

5. DEPARTMENT WOULD APPRECIATE ANSWERS TO ABOVE AS SOON AS POSSIBLE. CHRISTOPHER

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